

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(WESTERN DIVISION - LOS ANGELES)

UNITED STATES OF AMERICA,	)	CASE NO: 2:23-cr-00599-MCS-1
	)	
Plaintiff,	)	CRIMINAL
	)	
vs.	)	Los Angeles, California
	)	
ROBERT HUNTER BIDEN,	)	Thursday, September 5, 2024
	)	
<u>Defendant.</u>	)	(8:32 a.m. to 8:44 a.m.)

VOLUME 1 - VOIR DIRE

(JURY TRIAL - DAY 1)

BEFORE THE HONORABLE MARK C. SCARSI,
UNITED STATES DISTRICT JUDGE

APPEARANCES: SEE PAGE 2

Court Reporter: Recorded; CourtSmart

Courtroom Deputy: Stephen Montes Kerr

Transcribed by: Exceptional Reporting Services, Inc.
P.O. Box 8365
Corpus Christi, TX 78468
361 949-2988

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

EXCEPTIONAL REPORTING SERVICES, INC

APPEARANCES :

For Plaintiff:

LEO J. WISE, ESQ.
DEREK E. HINES, ESQ.
U.S. Department of Justice
Principal Senior Assistant
Special Counsel
950 Pennsylvania Ave. NW
Room B-200
Washington, DC 20530
771-217-6091

For Defendant:

MARK J. GERAGOS, ESQ.
TINA GLANDIAN, ESQ.
SETARA QASSIM, ESQ.
Geragos & Geragos
644 S. Figueroa St.
Los Angeles, CA 90017

ABBE D. LOWELL, ESQ.
Winston & Strawn
1901 L Street NW
Washington, DC 20036
202-282-5000

ANGELA M. MACHALA, ESQ.
Winston & Strawn
333 S. Grand Ave.
38th Floor
Los Angeles, CA 90071
213-615-1997

1 Los Angeles, California; Thursday, September 5, 2024; 8:32 a.m.

2 (Call to Order)

3 **THE CLERK:** Calling Item Number 1, CR-23-599,
4 *USA versus Robert Hunter Biden.*

5 Counsel, state your appearances, please.

6 **MR. WISE:** Good morning, Your Honor. Leo Wise and
7 Derek Hines for the United States. And with us at counsel
8 table is Special Agent Robert Baldini of the IRS CID and our
9 jury consultant, Dan Jacks.

10 **THE COURT:** Good morning.

11 **MR. LOWELL:** Abbe Lowell on behalf of Mr. Biden.

12 **MR. GERAGOS:** Good morning, Your Honor. Mark
13 Geragos, G-e-r-a-g-o-s, with Mr. Biden, Tina Glandian, Setara
14 Qassim, Q-a-s-s-i-m, who's seated in the I think we refer to it
15 as "the pew".

16 **THE COURT:** Good morning.

17 **MR. GERAGOS:** Good morning.

18 **THE COURT:** Okay. Good morning, everyone.

19 So we're starting with jury selection today. I think
20 we'll have plenty of time to get it done -- we've reserved
21 today and tomorrow. My balance of time tomorrow we'll use to
22 deal with any pretrial things we need to do before opening
23 statements.

24 We have a little bit of time before the jurors will
25 get here. We're going to kind of bring them up in groups

1 because we're going to bring 100 of them into the courtroom and
2 because of that we're not going to have anybody else in the
3 courtroom: press, spectators, that sort of thing. All those
4 folks can be in the overflow courtroom so they can see
5 everything that's happening.

6 In the overflow courtroom we'll have a camera on the
7 podium where the jurors will actually speak. We'll have a
8 camera on the bench and that should be sufficient.

9 Once we get enough cleared jurors -- we need 36
10 cleared jurors to have enough jurors to allow everyone to
11 exercise their peremptory strikes -- the process will be we'll
12 get the hundred in here, I'll give them some preliminary
13 instructions. I've got a questionnaire that the parties have
14 seen. I'll ask them all those questions. We'll have them fill
15 out their forms.

16 Once they're done we're going to take all the jurors,
17 the 100 of them, we're going to bring them over to Judge
18 Fischer's courtroom at the end of the hall. And then we'll
19 bring them back one by one, they'll come up to the podium.
20 I'll ask them where they're from in the LA area, I'll ask them
21 what their occupation is. I'll ask them if they have a
22 significant other and what their occupations are. I'll ask
23 them whether if they have adult children what their occupations
24 are. And then we'll ask them about the questions they answered
25 yes to on the questionnaire.

1 If it appears that they haven't answered "yes" to any
2 of the questions and we don't get much information from them, I
3 may ask them a few additional questions such as what are some
4 of your hobbies, what TV shows do you like to watch, those
5 sorts of things. The intent is to try to get the jurors
6 talking a bit so you get a sense of what they're about.

7 Once we're doing questioning the juror, we'll excuse
8 them back to Judge Fischer's courtroom. Then I'll ask the
9 parties if they have a challenge for cause and so we'll deal
10 with the cause challenges in real time. Once we're done with
11 that we'll bring the next juror in and that'll be the process.

12 Once we have 36 cleared jurors, then we have enough
13 for everyone to exercise their peremptory strikes and so we'll
14 stop at that point, we'll get the 36 back in the courtroom,
15 we'll fill the box with them, with 12, and then I'll ask the
16 parties to exercise preemptory challenges. And then once
17 somebody's excused in a peremptory strike, we'll fill that seat
18 with the next juror in line and that'll be the process.

19 Once we have our 12, we'll fill the four alternate
20 spots and the parties get two peremptory strikes on the
21 alternates so we'll do the same thing there. So that's the
22 process.

23 Before I get to preliminary matters, anybody have any
24 questions about that process?

25 **MR. WISE:** Not about the process, Your Honor, but

1 just an observation and a question.

2 I believe Mr. Morris is in the courtroom and he's on
3 the defense witness list. So in terms of sequestration we
4 would ask that he not be present for any part of the trial
5 until he testifies and that he not be allowed to participate
6 until he testifies.

7 **THE COURT:** Okay. Can I hear from the defense?

8 **MR. LOWELL:** Yes, Judge, it goes to two issues.

9 First of all I mean this is not part of the trial,
10 picking a jury or the preliminaries. The rule of witnesses
11 apply to when the actual testimony and openings, et cetera,
12 begin so that a witness isn't tainted. This is not part of
13 that. The rule of witnesses wouldn't apply.

14 It also raises another question I was going to ask --
15 that I was asked to ask you and I have a more important point
16 to make to Your Honor before.

17 But for now, I was told that I should inquire of you
18 why it is that Mr. Biden's spouse is not allowed in this
19 courtroom for these preliminaries or for jury selection. We
20 would ask that she's allowed.

21 **THE COURT:** Well the -- in order to get all the
22 jurors in here, the hundred jurors, we don't have room
23 essentially for any spectators or press. And it's hard to have
24 a rule where we say one person can come in but other people
25 can't. We have the Courtroom 1 downstairs which is a big, big,

1 big courtroom that everybody can observe all the proceedings
2 there so that's the reasoning behind that. As soon as we're
3 done with jury selection then obviously the courtroom's open to
4 anybody.

5 **MR. LOWELL:** We're not asking that all members of his
6 family, it's just his spouse. And of course in a case -- in
7 any case, any proceeding, having your most cherished loved one
8 is not only important for lots of reasons but not the least of
9 which of course is for the support. I didn't know that there
10 wouldn't be one spot even if it's at the bench in front to do
11 it that way.

12 **THE COURT:** Yeah. I have to have a cutoff. I don't
13 know how I would judge these things. You know the press
14 certainly wants to be here as well and they argue that they
15 should have a right to be here so that's the Ruling of the
16 Court.

17 **MR. WISE:** If I may respond to the first point?

18 No witness takes the stand knowing intimate details
19 about every juror and so that would make Mr. Morris unique in
20 that regard. So we think while perhaps technically if the rule
21 doesn't apply, certainly the spirit of it would not allow a
22 fact witness to participate or observe jury selection.

23 **MR. LOWELL:** I'm going to obviate this because
24 there's a much more important point to make to Your Honor if I
25 may?

1 **THE COURT:** Sure.

2 **MR. LOWELL:** We have gotten together this morning and
3 want to announce to the Court there's no reason to proceed with
4 jury selection because Mr. Biden intends to change his plea
5 this morning.

6 **THE COURT:** Okay.

7 **MR. LOWELL:** Therefore we'll obviate all that you
8 just indicated.

9 **THE COURT:** Okay. So your client intends to plead
10 guilty then.

11 **MR. LOWELL:** Correct.

12 **THE COURT:** Okay. So in that case I'm not going to
13 let the jurors go yet -- we'll keep them downstairs because
14 until the plea is on the record, I don't want to lose all the
15 folks that we've subpoenaed to be here.

16 The only issue with -- so this would be an open plea,
17 correct?

18 **MR. LOWELL:** It would be in the nature of an open
19 plea, yes. I mean it would be an open plea, looking at the
20 caselaw and your own rule, in the nature of Rule 11 and also
21 North Carolina versus Alford.

22 **THE COURT:** Will the parties want to confer on a
23 factual basis because we'll need to put that on the record and
24 there could be some negotiations between the parties as to what
25 an appropriate factual basis would be.

1 **MR. LOWELL:** May I go to the podium?

2 **THE COURT:** Sure.

3 **MR. WISE:** Your Honor, if I may before that?

4 **THE COURT:** Uh-huh.

5 **MR. WISE:** To be very clear, we will not agree to an
6 Alford plea which is a plea in which the defendant does not
7 admit guilt.

8 **THE COURT:** Okay.

9 **MR. LOWELL:** So let me address both of those points.
10 Yours first, his second.

11 There's no agreement about this, as you've just
12 heard, but there is no requirement for an agreement. Now I
13 know the Department has its own rules as to what it has to do
14 internally to decide if they're going to agree to it but the
15 law is very clear that their requirement is not to agree or
16 disagree. They can oppose but the law is very clear as to what
17 you just sort of indicated. That if a defendant satisfies the
18 requirements of Rule 11(b) and the Court finds there's a
19 factual basis, then the Court is required to take the plea.
20 That factual basis doesn't have to occur out of the mouth of
21 the defendant.

22 And the cases -- which I am prepared both to tell you
23 about if necessary and I have copies of them -- make that very
24 clear. So unlike a conditional plea and unlike the plea of
25 nolo, neither the prosecutors or the Court's approval is

1 required. And the cases that are reported in the Ninth Circuit
2 have various ones in which a prosecutor like Mr. Wise got up
3 and said, "We don't agree." And sometimes they do occur by
4 plea agreement and that's where the parties could get together
5 and agree on a factual statement but we don't have to do that.
6 I doubt that we would agree under the circumstances.

7 So the Court has to -- in fact the caselaw says
8 "must" -- find the factual basis from material other than the
9 defendant's own mouth. And I think there's more than enough
10 for you to do that given -- if anybody knows from the motions
11 to dismiss, from the pretrial conference, to all the
12 submissions, the Government having laid out what it believes is
13 its overwhelming evidence of the defendant's guilt.

14 **THE COURT:** Okay. Why don't we do this. I know it
15 doesn't appear that the parties have discussed this issue. Why
16 don't we stand in recess until 9:00 o'clock. Let me give the
17 parties an opportunity to discuss.

18 **MR. WISE:** Your Honor, if I just may?

19 **THE COURT:** Sure.

20 **MR. WISE:** So we have not discussed this. We have
21 not been in substantive plea negotiations with the Defense for
22 months. This is the first we're hearing of this.

23 We would appreciate the opportunity to be able to
24 brief whether Alford could be -- whether an Alford plea in this
25 case -- which again, is one in which the defendant does not

1 admit guilt -- is appropriate. And this is the first we've
2 heard of this so we would appreciate an opportunity to look at
3 the law that Mr. Lowell is now mentioning and decide what our
4 position is.

5 **THE COURT:** And I would normally give you an
6 opportunity to brief it. I sort of understand the position
7 you're in. The issue is we've got 120 jurors that we want to
8 hang on to if we need them.

9 So can we continue this matter until let's say 11:00?

10 **MR. WISE:** That would be -- yeah. If we had heard
11 this yesterday, we would have done the briefing; but yes, we
12 can --

13 **THE COURT:** Okay so let's --

14 **MR. LOWELL:** Judge, on that, for sure let's take the
15 break. If needs to 11:00, then I'll let you decide that,
16 that's fine. I don't think they need as much.

17 I will provide both the Court and counsel for the
18 Government with the cases that address this. In fact, every
19 case that addresses it so that they don't have to do much work
20 and I can basically hopefully expedite you and your colleagues'
21 ability to do that.

22 I think this can be resolved today. It doesn't need
23 days to do it because it's not like it's a very complicated
24 issue.

25 I will point out that in order to respond to what was

1 just said, you're right there has not been an agreement because
2 the only back and forth we ever had was the Government
3 basically saying if you want to plead to all nine counts,
4 that's what we want and that was not an acceptable basis for
5 anybody to start negotiating a plea in a case like this so here
6 we are.

7 **THE COURT:** Yeah. And the Court wants to stay out of
8 any plea discussion. So we'll stand in recess until 11:00
9 o'clock and then we'll come back and we'll discuss the plea.

10 And then just so you know, because of the nature of
11 this, I'm going to allow the courtroom to be open to press and
12 spectators and certainly the Defendant's spouse.

13 **MR. LOWELL:** Thank you. May I proffer to your clerks
14 a file of cases and --

15 **THE COURT:** You can bring them up to the courtroom
16 deputy. Thank you.

17 Okay. We'll stand in recess until 11:00 o'clock.
18 Thank you.

19 **THE CLERK:** All rise.

20 **(Recessed at 8:44 a.m.; remainder of proceeding under**
21 **separate cover)**

22

23

24

25

CERTIFICATION

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in the
above-entitled matter.



Signed

September 5, 2024

Dated

TONI HUDSON, TRANSCRIBER